

Legislature of the State of Texas

Austin, Texas



February 12, 1991

RQ-24

ID# 11669

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Opinion Committee

The Honorable Dan Morales
Texas Attorney General
Supreme Court Building
Austin, Texas 78701

Dear General Morales:

The 1990 federal census population counts to the block level were delivered by the United States Bureau of the Census to the State of Texas on February 5, 1991. In accordance with the interim stipulation between the parties in City of New York v. United States Department of Commerce, No. 88 Civ. 3474 (E.D.N.Y.), the data delivered contained the following legend:

The population counts set forth herein are subject to possible correction for undercount or overcount. The United States Department of Commerce is considering whether to correct these counts and will publish corrected counts, if any, not later than July 15, 1991.

Under the stipulation the Department of Commerce is continuing to conduct the procedures necessary to determine whether to make corrective adjustments, and will announce its decision by July 15, 1991. Of course, if the Department decides not to make adjustments to the data already delivered to Texas, the New York litigation will probably continue, and could result in an adjustment at some later date. In light of these developments, on behalf of the Senate Committee of the Whole on Redistricting and the House Redistricting Committee we request your opinion on the following questions:

1. Does the February 5, 1991, release of census counts subject by court order to possible adjustment constitute publication of the United States decennial census for purposes of Article III, Section 28, of the Texas Constitution?

2. If your answer to Question 1 is No, does any law prohibit the legislature from enacting state legislative, congressional, or State Board of Education redistricting plans during the current regular session of the legislature using the census counts delivered on February 5, 1991?

3. If your answer to Question 1 is No, and assuming that the Department of Commerce does not announce its decision whether to adjust the initial census counts during the current regular session of the legislature, if the legislature enacts legislative plans during the current regular session, or if the legislature chooses not to redistrict based on the lack of publication, may it enact legislative plans at a special session of the legislature after the Department of Commerce announces its decision whether to adjust the initial census counts?

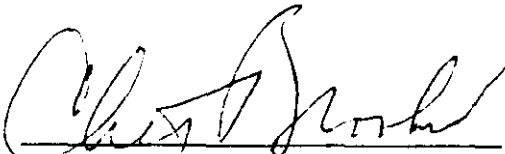
4. If your answer to Question 1 is Yes, would the release by the Department of Commerce of adjusted census counts after the end of the current regular session of the legislature but prior to the 1993 regular session constitute another publication of the United States decennial census for purposes of Article III, Section 28, of the Texas Constitution, giving the legislature an additional responsibility to redistrict the state house and senate?

5. If your answer to Question 4 is Yes, may the legislature redistrict the house or senate using the adjusted census at a special session, or would it be required to wait until the regular session of the legislature in 1993?

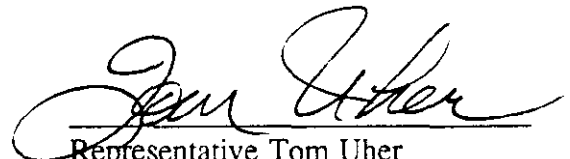
6. If your answer to Question 1 is Yes, assuming that the legislature fails to redistrict the state house or senate during the current regular session of the legislature, how would the release by the Department of Commerce of adjusted census counts during the jurisdictional period of the Legislative Redistricting Board affect the authority of the Legislative Redistricting Board?

We are aware that you have already received at least one request from other members of the legislature for an opinion on substantially the same question as Question 1 set out above. We respectfully request that you consider the questions we have asked in this letter in conjunction with that and other requests relating to the same issues. We share the concerns of our colleagues in the legislature with regard to redistricting with figures that may undercount any group of persons in this state. At the same time, we want to ensure that, if the census counts already received by the state are not adjusted by the Department of Commerce before the 1992 elections, new districts are put into place until adjusted counts become available. It would be unthinkable to use the current districts based on the 1980 census for the 1992 elections, since the population disparities among those districts that now exist are extreme and the continued use of those districts would subject the state to legal challenge under the one-person, one-vote standard.

As you know, the limited duration of the 1991 regular session of the legislature makes the application of Article III, Section 28, of the Texas Constitution of immediate concern. Therefore, we respectfully request your response to the questions set out in this letter at the earliest practicable opportunity.



Senator Chet Brooks
Chair
Senate Committee of the Whole
on Redistricting



Representative Tom Uher
Chair
House Redistricting Committee

xc: The Honorable Ann Richards, Governor
The Honorable Bob Bullock, Lieutenant Governor
The Honorable Gib Lewis, Speaker of the House
The Honorable John Sharp, Comptroller of Public Accounts
The Honorable Garry Mauro, Land Commissioner
The Honorable Bob Glasgow
The Honorable Eddie Bernice Johnson
Senate Members
House Redistricting Committee Members